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FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 19-59, GN Docket No. 14-177; 18-85; DA 19-397]

Notice of Updated 39 GHz Reconfiguration Procedures; Preparation for Incentive Auction of Upper Microwave Flexible Use Service Licenses in the 37 GHz, 39 GHz, and 47 GHz Bands (Auction 103); Order of Modification

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: In this document, the Wireless Telecommunications Bureau, in cooperation with the Office of Economics and Analytics, adopts procedures to reconfigure and modify existing 39 GHz licenses in preparation for Auction 103, an incentive auction that will offer licenses the Upper 37 GHz, 39 GHz, and 47 GHz bands. The reconfiguration procedures in the Updated 39 GHz Reconfiguration Procedures Public Notice are a critical step toward offering new licenses in this incentive auction, and will enhance opportunities for both incumbents and new entrants to provide valuable 5G wireless, Internet of Things, and other advanced services.

DATES: Auction 103 is scheduled to begin on December 10, 2019.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Erik Salovaara in the Office of Economics and Analytics' Auctions Division at (202) 418-0660. For Upper Microwave Flexible Use Service (UMFUS) questions, Simon Banyai in the Wireless Telecommunications Bureau's Broadband Division at (202) 418-2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Updated 39 GHz Reconfiguration Procedures Public Notice, AU Docket No. 19-59, GN Docket No. 14-177, DA 19-397, released on May 14, 2019. The complete text of the Updated 39 GHz Reconfiguration Procedures Public Notice, including attachments and any related document, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W.,

Room CY-A257, Washington, DC 20554. The Updated 39 GHz Reconfiguration Procedures Public Notice and related documents also are available on the Internet at the Commission's web page: <https://www.fcc.gov/auction/103>, or by using the search function for AU Docket No. 19-59 or for GN Docket No. 14-177 on the Commission's Electronic Comment Filing System (ECFS) web page at <https://www.fcc.gov/ecfs/>. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

I. INTRODUCTION

1. In the Updated 39 GHz Reconfiguration Procedures Public Notice, the Wireless Telecommunications Bureau (Bureau), in cooperation with the Office of Economics and Analytics (OEA) (jointly Bureau/OEA), adopts procedures to reconfigure and modify existing 39 GHz licenses in preparation for Auction 103, an incentive auction that will offer new flexible use licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands. These reconfiguration procedures are a critical step toward offering new licenses in this incentive auction and will enhance opportunities for both incumbents and new entrants to provide valuable 5G wireless, Internet of Things, and other advanced services. On April 12, 2019, FCC Chairman Pai announced, at a White House Event, that the incentive auction will begin on December 10, 2019.

II. BACKGROUND

2. In the Spectrum Frontiers Fourth Report & Order, the Commission provided that each 39 GHz incumbent will choose among three options for its existing 39 GHz licenses. Specifically, each incumbent may choose to: (1) have its licenses modified based on the Commission's proposed reconfiguration of its license holdings (Option 1); (2) have its licenses modified based on an acceptable alternative reconfiguration that the incumbent proposes, provided that it satisfies certain specified conditions (Option 2); or (3) commit to relinquish the

holdings provided by all its existing licenses in exchange for an incentive payment and the opportunity to bid for new licenses (Option 3).

3. In the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA set forth reconfiguration procedures consistent with the framework established by the Commission. The Bureau sought comment generally on those procedures and more specifically on four particular proposals presented in the Initial 39 GHz Reconfiguration Procedures Public Notice. First, the Bureau sought comment on a proposed methodology for setting relative weights for spectrum holdings by PEA, to be used to combine “partial PEA” holdings across PEAs. Second, the Bureau sought comment on whether to increase the threshold for post-reconfiguration de minimis rounding from 5% to 10%. Third, the Bureau sought comment on the proposed process for calculating the geographic boundaries of a modified license for a partial PEA. Fourth, the Bureau sought comment on how to direct the incentive payment for an incumbent that is made up of a group of commonly controlled licensees.

4. Further, the Bureau implemented a temporary freeze on the acceptance and processing of applications relating to any future transfers or assignments of 39 GHz licenses. There was an exception to the freeze for transfers or assignments to or among commonly controlled entities, for which applications were required to be filed on or before April 15, 2019. In the Initial 39 GHz Reconfiguration Procedures Public Notice, incumbents were also instructed to make any corrections to their license information in the Universal Licensing System (ULS) no later than April 15, 2019. No applications seeking such transfers or assignments of 39 GHz licenses have been filed since implementation of the temporary freeze. The Bureau notes that pro forma corporate realignments that do not change the controlling interest holder or the licensee, e.g., a change in an intermediate corporate holding company, are not precluded by this freeze. In many cases, such realignments do not require application to the Commission for advance approval.

5. The Initial 39 GHz Reconfiguration Procedures Public Notice also served as an order of modification for existing 39 GHz licenses. Specifically, the Bureau explained that, as proposed by the Commission in the Spectrum Frontiers Fourth Report & Order all existing 39 GHz licenses are subject to modification, regardless of whether an incumbent elects to receive modified licenses or relinquish its spectrum usage rights in exchange for an incentive payment, with the opportunity to bid on new licenses.

6. The Updated 39 GHz Reconfiguration Procedures Public Notice also serves as an order of modification for existing 39 GHz licenses. The licenses of all 39 GHz band licensees are modified as specified in the Spectrum Frontiers Fourth Report & Order and further explained in the Updated 39 GHz Reconfiguration Procedures Public Notice. The Updated 39 GHz Reconfiguration Procedures Public Notice is being sent by certified mail, return receipt requested, to each current 39 GHz licensee at the mailing address on file in ULS.

III. PREPARING THE 39 GHZ BAND FOR AUCTION 103

7. Consistent with Commission decisions in the Spectrum Frontiers Fourth Report & Order, the Bureau/OEA will reconfigure existing 39 GHz licenses to match the new 39 GHz band plan and license areas. With the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA implemented the first steps toward quantifying the 39 GHz holdings of incumbents by aggregating existing licensees' holdings in terms of MHz-pops by PEA and consolidating the holdings of commonly controlled licensees based on then existing ULS. For purposes of Auction 103, an "incumbent" includes both an existing 39 GHz licensee, individually or together with other commonly controlled existing 39 GHz licensees. In the Spectrum Frontiers Fourth Report and Order, the Commission decided that separate licenses held by entities that control or are controlled by each other and/or have controlling ownership interests in common ("commonly controlled entities") will be treated as being held by a single entity in the reconfiguration of existing 39 GHz licenses. As described in these procedures, an incumbent may

represent one or more existing 39 GHz licensees with respect to reconfiguration of existing licenses, the receipt of an incentive payment, and bidding on new licenses.

8. The Updated 39 GHz Reconfiguration Procedures Public Notice and its Appendices update the initial data on aggregate incumbent holdings and establish the final procedures that will be used for the remaining steps of the reconfiguration process. The Bureau/OEA resolve all open issues raised in the Initial 39 GHz Reconfiguration Procedures Public Notice and address the comments received from AT&T, T-Mobile, and Verizon. Verizon was the only party to file a reply comment.

9. From the perspective of 39 GHz incumbents, the major remaining steps of the 39 GHz band reconfiguration process are as follows, with additional detail provided in subsequent sections of the Updated 39 GHz Reconfiguration Procedures Public Notice:

- Review Updated 39 GHz Reconfiguration Procedures Public Notice and Updated Aggregated Holdings Data. In Appendix B, the Bureau/OEA provide each incumbent's updated 39 GHz aggregated (and consolidated, if applicable) holdings data in each Partial Economic Area (PEA) ("Updated Aggregated Holdings Data"). The data has been updated to reflect additional information obtained after the Initial 39 GHz Reconfiguration Procedures Public Notice.
- Review Reconfigured 39 GHz Incumbent Holdings Public Notice. The procedures and methodologies the Bureau/OEA adopted in the Updated 39 GHz Reconfiguration Procedures Public Notice will be applied to reconfigure each incumbent's holdings to match the new band plan and service areas. The forthcoming Reconfigured 39 GHz Incumbent Holdings Public Notice will show the holdings in each PEA that will determine the 100 megahertz license(s) that each incumbent would receive if it chose to accept modified licenses based on the Commission's proposed reconfiguration (Initial Commitment Option 1). Any

incumbent receiving more than one modified license in a PEA will receive licenses for contiguous frequencies within the PEA. However, the final frequencies of the licenses will be determined only after the assignment of frequencies for new licenses won in the auction process. The Reconfigured 39 GHz Incumbent Holdings Public Notice also will announce the timeline for incumbents to file FCC Form 175-A and make Initial Commitments.

- File FCC Form 175-A. To be able to access the Commission's Initial Commitment System, each incumbent must file an Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A). In the event that no FCC Form 175-A is submitted for an incumbent, that incumbent will be considered to have committed to accepting modified licenses based on the Commission's proposed reconfiguration and to forgoing any opportunity to relinquish any holdings for an incentive payment or to become eligible to bid in Auction 103 for new licenses in Upper 37 GHz, 39 GHz, and 47 GHz (i.e., will be considered to have submitted Option 1). Consistent with the Commission decision, a party that controls or is controlled by an existing 39 GHz licensee that is considered to have submitted Initial Commitment Option 1 or that has a controlling interest in common with an existing 39 GHz licensee that is considered to have submitted Initial Commitment Option 1 also will not be eligible to bid in Auction 103
- Make an Initial Commitment. Each incumbent may commit to one of the three options: (Option 1) accepting modified licenses based on a reconfiguration of its holdings proposed by the Commission in the Reconfigured 39 GHz Holdings Public Notice; (Option 2) accepting modified licenses based on its acceptable alternative reconfiguration; or (Option 3) relinquishing spectrum usage rights under all its 39 GHz licenses in exchange for an incentive payment and being eligible to bid on new

licenses. The deadline for submitting an option choice in the Initial Commitment system will be no sooner than 60 days after the release of the Reconfigured 39 GHz Incumbent Holdings Public Notice. An incumbent that for any reason does not submit an Initial Commitment by the deadline will be considered to have submitted Option 1 (i.e., it committed to accepting modified licenses based on the Commission's proposed reconfiguration and to forgoing any opportunity to relinquish any holdings for an incentive payment or to become eligible to bid in Auction 103 for new licenses in Upper 37 GHz, 39 GHz, and 47 GHz).

- Redistribute Holdings in Round Zero, if applicable. Each incumbent submitting Option 3 will have a limited opportunity during the Initial Commitment submission window to redistribute partial PEA holdings in its updated aggregated holdings. Such an incumbent may use weighted MHz-pops to make such redistributions as part of the Round Zero process in the Initial Commitment System. An incentive payment to a 39 GHz incumbent committing to Option 3 will be based on its holdings at the close of Round Zero, taking into account any redistributions that the incumbent makes.
- Bid for New Licenses, if applicable. As announced by the Commission in the Spectrum Frontiers Fourth Report and Order, an existing licensee that submits either Option 1 or 2 in the Initial Commitment System will not be eligible to bid for new licenses in Auction 103. Consistent with the Commission decision, a party with a controlling interest in an existing 39 GHz licensee that submits Initial Commitment Options 1 or 2 or that is controlled by a party that also controls an existing 39 GHz licensee that submits Initial Commitment Options 1 or 2 also will not be eligible to bid in Auction 103. An existing licensee that submits Option 3 in the Initial Commitment System, however, may apply to bid for new licenses by filing a short-

form application to participate in the auction (FCC Form 175), though it is not required to do so.

- Receive Modified 39 GHz Licenses, if applicable. Each licensee will retain its existing 39 GHz licenses until after the close of Auction 103. Modified licenses will not be issued until after the close of Auction 103. Any licenses won by an incumbent in Auction 103 will be issued pursuant to the Commission's standard post-auction process of receiving payment for winning bids, reviewing license applications, and then granting the new licenses. Incumbents will be able to seek Special Temporary Authority as needed to transition from existing licenses to modified licenses or to new licenses that will be issued subsequently.
- Receive Incentive Payments, if applicable. The Commission will be ready to direct the United States Treasury to disburse incentive payments owed following the grant of new licenses based on winning bids in Auction 103. Each incentive payment will be determined based on an incumbent's holdings after Round Zero and the final clock phase price for related spectrum blocks. An incentive payment may reduce the amount of Auction 103 winning bids only if the same party using the same FCC Registration Number (FRN) is the applicant on both FCC Form 175-A (for Initial Commitments) and FCC Form 175 (for Auction 103). In all other cases, regardless of any relationship between a winning bidder and existing licensees or the FCC Form 175-A applicant, the winning bidder will be obligated to pay its winning bids without reduction by any incentive payment. The incumbent may direct any incentive payment to more than one account, provided that the account owner is either the FCC Form 175-A applicant or one of the existing 39 GHz licensees listed on the FCC Form 175-A.

IV. QUANTIFYING EXISTING 39 GHZ LICENSES

A. Updated Aggregated Holdings

10. Appendix B of the Updated 39 GHz Reconfiguration Procedures Public Notice lists Updated Aggregated Holdings Data and reflects additional information obtained after the release of the Initial Aggregated Holdings Data with the Initial 39 GHz Reconfiguration Procedures Public Notice. Appendix B provides the updated data, including the extent of any changes. The additional information that resulted in changes includes a statement asserting Video Multipoint Inc.'s de facto common control of licenses held by licensee Ronna L Sauro. Accordingly, the holdings of those licensees are consolidated in Appendix B. Review of the data also identified a unique case where a single licensee, FiberTower Spectrum Holdings LLC, using two different FRNs, held RSA licenses on the same frequencies that overlapped geographically. Due to the different FRNs, the geographic overlap was not considered when determining the holdings with respect to each FRN, which resulted in the population in the overlap being counted twice. The Bureau/OEA have corrected that error and removed the double counted population. Finally, the updated data reflects minor corrections to the population totals of some incumbents' holdings. In a limited number of cases, the points of the population cells fell precisely on the border between PEAs and/or licenses and the automated system did not correctly assign the related population. These relatively small corrections result in some incumbents' holdings decreasing by at most 0.7% or increasing by at most 0.3%.

11. The Bureau/OEA list 39 GHz MHz-pops holdings based on the information available in the public ULS. The holdings have been determined by the population covered by a license within a PEA, aggregated by licensee, and consolidated for commonly controlled entities, if applicable. These Updated Aggregated Holdings will be used with respect to any option an incumbent submits as its Initial Commitment. The holdings in Appendix B of the Updated 39 GHz Reconfiguration Procedures Public Notice were calculated pursuant to the process described

in the Initial 39 GHz Reconfiguration Procedures PN, using the formulas described in Appendix A of the Updated 39 GHz Reconfiguration Procedures Public Notice.

B. Methodology for Setting Relative Weights for Spectrum Holdings by PEA

12. The Bureau/OEA adopt a methodology for calculating the index of relative PEA weights for the Auction 103 reconfiguration process using price data from Auctions 102 (24 GHz) and 1002 (600 MHz). For Auction 102, the Bureau/OEA used data from bidding in the clock phase, which concluded on April 17, 2019. Based on input from commenters, the Bureau/OEA revise the methodology proposed in the Initial 39 GHz Reconfiguration Procedures Public Notice by not including data from Auction 97 (AWS-3), and the Bureau/OEA assign relative proportions between Auctions 102 and 1002 in the index.

13. Auctions 102 and 1002 offered PEA licenses, which makes their prices directly comparable to those in Auction 103. Auction 97, in contrast, included licenses based on Economic Areas (EAs) and Cellular Market Areas (CMAs). Due to these licensing area differences, Verizon Wireless objects to using Auction 97 data and asserts that “there is no sound reason to set a PEA-based price index using data from auctions of different license configurations that may reflect over- and under-inclusive MHz-pops values.” AT&T also warns of challenges inherent in using price data from the different geographic areas used in Auction 97 and notes that, if data are not distributed appropriately, “the impact would be to raise the weighted value of less densely populated PEAs and decrease the weighted value of the higher population density PEAs.” In light of these concerns about the use of non-PEA data from Auction 97, and the fact that Auction 102 clock phase data is now available, the Bureau/OEA conclude that it will base the index only on Auctions 1002 and 102.

14. Commenters uniformly agree with the proposal not to include data from Auction 101 (28 GHz) in the index. The Initial 39 GHz Reconfiguration Procedures Public Notice addressed an alternative proposal that would take into account prices from the partial set of

county-level licenses available in Auction 101 using a regression methodology, but no commenters support that approach.

15. The Bureau/OEA also sought comment on its proposal to weight Auction 102 more heavily than Auction 1002, and on the specific weights the Bureau/OEA should use if it does so. T-Mobile asserts that Auction 102 should be weighted more heavily because the millimeter wave spectrum in Auction 102 is more comparable to the frequency bands available in Auction 103. Verizon Wireless disagrees and asks that the Bureau/OEA weight Auctions 102 and 1002 equally, claiming that the “critical component of these valuations is license area, not spectrum band.” Further, Verizon Wireless claims that weighting Auction 102 more heavily “is particularly problematic here where the Bureau is valuing an incumbent’s existing spectrum holdings that could be exchanged for either a voucher to participate in Auction 103 or an incentive payment, potentially resulting in lost value to the existing licensee.” The Bureau/OEA were not persuaded that weighting the results of Auction 102 more heavily is problematic. In addition to the frequency bands in Auction 102 being more similar to those in Auction 103, the Auction 102 data reflect more recent market conditions. Moreover, the auction procedures the Bureau/OEA adopt allow an existing licensee to retain all of its existing blocks for full PEAs without making any additional payments, regardless of the weight assigned to the PEA. In addition, the incumbent may redistribute its holdings of partial PEA blocks in Round Zero if it feels the weight indices for those PEAs are inaccurate. Accordingly, consistent with T-Mobile’s suggestion, The Bureau/OEA will assign a weight of two-thirds to Auction 102 in the index and one-third to Auction 1002.

16. The Bureau/OEA do not adopt T-Mobile’s suggestion that, within Auction 102, the Bureau/OEA weight the Upper Band blocks more heavily than the Lower Band blocks because of concerns expressed about the use of the Lower Band. The Bureau/OEA note that the Lower Band blocks represent only two-sevenths of the inventory in that auction, and

consequently, prices for the Lower Band blocks will naturally have a lower weight than the Upper Band blocks in the index.

17. As a result of these decisions, the procedures used to construct the index of weights set out in Appendix C of the Updated 39 GHz Reconfiguration Procedures Public Notice, did not require converting all data to a PEA basis. Otherwise those procedures are consistent with those set forth in the Initial 39 GHz Reconfiguration Procedures Public Notice. Specifically, the weights were determined by: (i) computing an average price for each PEA in Auctions 1002 and 102, (ii) calculating a relative price index value for each PEA in each auction, and (iii) taking a weighted average of index values, weighting Auction 102 data by two-thirds and Auction 1002 data by one-third to create the index for weighting the MHz-pops in each PEA. The weighted MHz-pops for a block in a PEA then can be calculated by multiplying the unweighted MHz-pops times the index value for the PEA.

V. RECONFIGURED HOLDINGS FOR MODIFIED LICENSES

18. The final procedures the Bureau/OEA adopted for reconfiguring the updated aggregated 39 GHz holdings are the same as those described generally in the Initial 39 GHz Reconfiguration Procedures Public Notice. The final procedures include procedures consistent with the tentative conclusion regarding de minimis rounding and our proposal for determining the boundaries of modified licenses for partial PEAs, each of which were supported by the only commenter that addressed the issues.

A. Proposed and Alternative Reconfigurations

19. The Commission directed the Bureau to reconfigure 39 GHz holdings of existing licensees. Subject to specified constraints, the Commission will implement the reconfiguration using a mathematical optimization, as described further in the Initial 39 GHz Reconfiguration Procedures Public Notice and in the Updated Reconfiguration Technical Guide (Appendix A) of the Updated 39 GHz Reconfiguration Procedures Public Notice. In brief, the optimization will consider all possible ways to reconfigure the incumbent's holdings equivalent to a partial PEA

license such that the incumbent will have at most a single modified partial PEA license while keeping constant the incumbent's total weighted MHz-pops. Among the reconfigurations that meet these criteria, the Commission will propose the reconfiguration that assigns the modified license for a partial PEA, if any, in the available PEA that as a result will have the fewest remaining unassigned weighted MHz-pops.

20. An incumbent also will have an opportunity to provide an acceptable alternative reconfiguration in place of the Commission's proposed reconfiguration. To be an acceptable alternative reconfiguration, the incumbent's plan must satisfy the following constraints: (i) the incumbent's combined total MHz-pops holdings are kept constant; (ii) for every PEA with partial PEA holdings but one, the incumbent's holdings in the PEA are reduced down to the greatest integer (full block equivalents) less than or equal to the incumbent's updated aggregate holdings in the PEA or increased up to the least integer (full block equivalents) greater than or equal to its updated aggregate holdings in the PEA; and (iii) for at most a single PEA in which the incumbent has final aggregate holdings equivalent to a partial PEA license, those holdings are increased to less than the equivalent of a new license, or decreased to no less than zero, while maintaining the incumbent's combined holdings. Unlike the Commission's reconfiguration proposal, an incumbent's alternative reconfiguration need not locate any modified license for a partial PEA in the PEA with the fewest remaining unassigned weighted MHz-pops.

B. Reconfigured Holdings Equivalent to a Partial PEA.

21. In the Spectrum Frontiers Fourth Report and Order, the Commission determined that any modified license would be for 100 megahertz, the complete bandwidth of a new license. Consequently, any single modified license for a "partial PEA" would be "partial" in relation to the geography of a full PEA covered by a new license. In the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA sought comment on two issues relating to these partial PEA holdings: (1) the de minimis rounding threshold; and (2) how the Commission will calculate the boundaries of any modified license for a partial PEA holding.

22. De Minimis Rounding and Option to Relinquish. The Commission concluded in the Spectrum Frontiers Fourth Report and Order that an incumbent accepting modified licenses should be assigned a modified license covering a full PEA if its reconfigured holdings equivalent to a partial PEA would leave a de minimis portion of the population uncovered. The Commission found such rounding would serve the public interest because it would ensure that an incumbent had the opportunity to serve the entire PEA, rather than leaving a small percentage of the population most likely unserved. The Commission set this de minimis threshold at 5% and directed the Bureau to determine whether it should be increased up to 10%. In the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA tentatively concluded that it should increase the de minimis threshold to 10%.

23. The Bureau/OEA adopt their tentative conclusion to increase the de minimis threshold to 10% for the partial PEA holding. The only party addressing this issue in the record, T-Mobile, supports the this conclusion. T-Mobile agrees that this approach will maximize the remaining number of full PEA licenses available for auction. This approach also will eliminate the possibility of having to offer separate licenses at auction that cover less than 10% of the PEA population, which would likely attract few significant bids, if any, and likely leave those populations unserved. Further, T-Mobile agrees that de minimis rounding should apply only where the incumbent commits to accept modified licenses, to avoid an incumbent receiving an incentive payment windfall from such de minimis rounding. Accordingly, an incumbent will receive a modified license for a full PEA if it has reconfigured holdings in the PEA that would cover 90% or more of the PEA population.

24. Geographic Boundaries of Modified Licenses for Partial PEAs. As determined in the Spectrum Frontiers Fourth Report and Order, the license for an incumbent's one remaining partial PEA block after reconfiguration will be determined by adjusting the incumbent's currently licensed area in a PEA so that it corresponds to the incumbent's reconfigured holding in that PEA. The geographic boundaries of a modified license for a partial PEA will be "as similar as

possible to the incumbent's original holdings in that PEA, recognizing that the remaining partial PEA block may cover a larger or smaller percentage of pops than the existing license."

25. The Commission stated it would determine the geographic boundaries of this modified license even when the incumbent submits an acceptable alternative reconfiguration. The same methodology will be used to determine the geographic boundaries for any partial PEA, whether it results from a Commission reconfiguration proposal or an acceptable alternative submitted by the incumbent. The precise geographic boundaries of a modified license for a partial PEA will be determined only after an incumbent makes its Initial Commitment. In the Initial 39 GHz Reconfiguration Procedures Public Notice and in the Reconfiguration Technical Guide (Appendix A) of the Updated 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA outlined their process by which the geographic boundaries of modified licenses for partial PEAs would be determined and the Bureau/OEA sought comment on this process.

26. The Bureau/OEA adopt their proposal for determining the geographic boundaries of modified licenses for partial PEAs. Specifically, the Bureau/OEA conclude that the system will first determine an incumbent's current geographic coverage and then will add (or, in the case that the population in the coverage area exceeds the reconfigured holdings, subtract) two-by-two kilometer grid cells adjacent to this coverage area within the PEA. The system will do so until arriving at the population as close to the MHz-pops value of the incumbent's reconfigured holdings in the PEA as possible while not being less than the MHz-pops value of the reconfigured holdings. If multiple combinations of grid cells could yield the same outcome, the optimization will randomly choose one of the combinations. As noted by T-Mobile, the sole commenter on this issue, this approach will promote a result whereby an incumbent's post-reconfiguration boundaries will reflect, as closely as possible, an incumbent's pre-reconfiguration holdings, should it choose to accept modified licenses.

VI. INITIAL COMMITMENTS

27. With one exception, the Bureau/OEA adopt as final procedures for the initial commitment process those described in the Initial 39 GHz Reconfiguration Procedures Public Notice. In the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA tentatively concluded that only one of the commonly controlled entities that holds an existing 39 GHz license would receive the single incentive payment for an incumbent's combined holdings relinquished in the incentive auction. In response to the record regarding incentive payments, the Bureau/OEA revised this approach. The Bureau/OEA will permit a party lacking an existing 39 GHz license that controls an incumbent's 39 GHz licensees or that is controlled by another party that controls the incumbent's 39 GHz licensees to receive an incentive payment. Using the procedures described below, this approach will enable an incumbent using a party lacking 39 GHz licenses to bid on new licenses in Auction 103 and to reduce its winning bids by the amount of the incentive payment for the incumbent's holdings. In response to additional comments, the Bureau/OEA also permits the incumbent to divide its single incentive payment amount among accounts owned by the commonly controlled party that represents existing 39 GHz licensee(s), or by one or more of its 39 GHz licensees. Key aspects of the final procedures for the initial commitment process as also explained in the Initial 39 GHz Reconfiguration Procedures Public Notice and Appendix D: Updated Initial Commitment Technical Guide, of the Updated 39 GHz Reconfiguration Procedures Public Notice.

28. The Reconfigured 39 GHz Incumbent Holdings Public Notice will announce the timeline for Initial Commitments. The timeline will include a window for filing the Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A). Among other things, on the FCC Form 175-A, an incumbent will identify the individuals who are authorized to act as the incumbent's Initial Commitment Representatives. The timeline will include a deadline for submitting a binding Initial Commitment regarding the combined 39 GHz holdings of the applicable incumbent through the Initial Commitment system. The window for filing FCC Form

175-A will open no sooner than 30 days after the timeline is announced and the deadline for submitting Initial Commitments will be no sooner than 30 days after the FCC Form 175-A filing window opens.

29. An incumbent that for any reason does not submit an Initial Commitment by the deadline will be considered to have committed to accepting modified licenses based on the Commission's proposed reconfiguration and to forgoing any opportunity to relinquish any partial PEA holdings for an incentive payment or to become eligible to bid for licenses in Auction 103 (Initial Commitment Option 1). A party with a controlling interest in an existing 39 GHz licensee that is considered to have submitted Initial Commitment Option 1, or that is controlled by a party that also controls an existing 39 GHz licensee that is considered to have submitted Initial Commitment Option 1 also will not be eligible to bid in Auction 103. If a 39 GHz incumbent has updated holdings for a group of commonly controlled entities and is considered to have submitted Initial Commitment Option 1, committing to accepting modified licenses, the modified licenses will be issued to the consolidated incumbent listed in Appendix B of the Updated 39 GHz Reconfiguration Procedures Public Notice.

30. Based on the Initial Commitments, the Commission will announce the number of spectrum blocks in the Upper 37 GHz and 39 GHz bands that will be available in Auction 103. A number of spectrum blocks in the Upper 37 GHz and 39 GHz spectrum bands will be reserved in each PEA sufficient for any modified licenses that incumbents commit to accept. The number of remaining spectrum blocks then will be available to be assigned as new licenses in Auction 103. Other than information about the number of blocks available in Auction 103, the Commission will not make public any information relating to incumbents' Initial Commitments until after Auction 103 closes.

31. The final changes to any existing licenses, whether modifications or cancellations based on voluntary relinquishment, will occur after the close of Auction 103. The incumbent will be bound to fulfill its Initial Commitment following the close of Auction 103.

A. Incumbent 39 GHz Licensee Short-Form Application

32. Each incumbent will use the Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A) to: (a) provide identifying information for the applicant; (b) provide information for a contact person regarding the application; (c) list the FRNs of all existing 39 GHz licensees with licenses being consolidated for purposes of Auction 103; (d) name up to three Initial Commitment Representative(s); and (e) make required certifications. The Bureau/OEA will make available instructions and other educational materials prior to the opening of the FCC Form 175-A filing window.

33. FCC Form 175-A Applicant. In the Spectrum Frontiers Fourth Report and Order, the Commission decided that each incumbent's 39 GHz license holdings would be treated on a combined basis, whether aggregated by PEA for an individual licensee or aggregated and consolidated by PEA for commonly controlled entities that are treated as a single incumbent. To implement our revised approach regarding the party eligible to receive an incumbent's incentive payment, the FCC Form 175-A applicant may be an existing 39 GHz licensee or it may be a party subject to common control with the existing 39 GHz licensee(s) listed in the FCC Form 175-A. The FCC Form 175-A applicant will represent the incumbent for purposes of making an initial commitment to accept modified licenses or relinquish all existing spectrum usage rights in exchange for an incentive payment and the opportunity to bid for new licenses in Auction 103. An FCC Form 175-A applicant must certify that it represents itself and all licensee(s) listed in the application with existing 39 GHz licenses being consolidated for purposes of Auction 103, all of which must be commonly controlled. The applicant may name up to three individuals as Initial Commitment Representatives, each of whom is authorized by the applicant to make an Initial Commitment regarding the holdings of the existing 39 GHz licensees listed in the application.

34. The Commission will issue any modified licenses to the FCC Form 175-A applicant that submits Initial Commitment Option 1 or 2. If an entity wishes to assign modified licenses to multiple commonly controlled entities, it may do so through the Commission's

standard transfer and assignment process including making pro forma transfers or assignments, after the modified licenses have been issued to the FCC Form 175-A applicant. If the entity listed on FCC Form 175-A does not have a current FCC Form 602 Ownership Form on file, prior to modified licenses being issued, it will provide the necessary license ownership, basic eligibility, and qualification information required of FCC licensees. Similarly, the Commission will calculate a single incentive payment for spectrum usage rights relinquished by an incumbent. As discussed in connection with incentive payments, the FCC Form 175-A applicant then may direct that incentive payment to more than one account, provided the account owners are either the FCC Form 175-A applicant or one of the existing 39 GHz licensees listed on the FCC Form 175-A. In Auction 103, the bidding system automatically will calculate obligations toward winning bids reduced by any incentive payment for relinquished holdings if the FCC Form 175-A applicant also applies for and bids in Auction 103 using the same FRN. In all other cases, regardless of any relationship between an Auction 103 bidder and the FCC Form 175-A applicant or listed 39 GHz licensees, a winning bidder will be obligated to pay its winning bids at the close of the auction regardless of any incentive payment it may receive later.

35. An incumbent bidding on new licenses and claiming a designated entity bidding credit, *e.g.*, a small business bidding credit, in Auction 103 may receive a bidding credit only with respect to winning bid amounts that exceed any incentive payment to that incumbent. This remains the case even when an incumbent uses different parties as the applicant on the FCC Form 175-A for Initial Commitments and on the FCC Form 175 for bidding on new licenses. In such a case, *i.e.*, when the FRN of the applicant on the FCC Form 175-A for Initial Commitments is not the same as the FRN on the FCC Form 175 for bidding on new license, the Bidding System will reflect the FCC Form 175 applicant's claimed bidding credit without taking into account the incumbent's incentive payment, payable at the direction of the FCC Form 175-A applicant. As a result, the bidding credit reflected in the bidding system may not be correct. The Commission

will make the correct calculation during the post-auction licensing process and adjust the bidding credit discount accordingly.

36. Rule Prohibiting Certain Communications. As of the deadline for filing FCC Form 175-A, any incumbent 39 GHz licensee listed in an FCC Form 175-A will be considered to be an applicant in Auction 103 for purposes of section 1.2105(c), the Commission's rule that prohibits certain auction-related communications from the short-form application deadline until the post-auction deadline for down payments on new licenses. Subject to specified exceptions, the rule provides that, after the application filing deadline, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline...."

37. The rule will apply to a covered incumbent from the deadline for filing FCC Form 175-A regardless of whether the incumbent ultimately relinquishes spectrum usage rights. In this respect, the applicant on FCC Form 175-A and any listed licensees are the "covered incumbent," as all have an interest in the holdings and any resulting incentive payment. Any existing 39 GHz licensee that is listed on an FCC Form 175-A could relinquish existing spectrum usage rights in exchange for an incentive payment, even if ultimately it does not do so. In contrast, an incumbent that wants only to commit to accept the modification proposed by the Commission may do so without filing an FCC Form 175-A. In that case, it will be deemed to have committed to accepting modified licenses based on the Commission's proposed reconfiguration and to keeping any modified partial PEA license. Information on all covered incumbents will be available to the public since applicants and listed licensees on FCC Form 175-A and/or applicants filing FCC Form 175 will be identified by public notice subsequent to the

respective filing deadlines for the forms. The rule prohibiting certain communications prohibits those communications between applicants and nationwide providers, regardless of whether those nationwide providers are applicants in the auction. Consistent with the procedures adopted for Auctions 101 and 102 with respect to millimeter wave bands, the Bureau/OEA identify AT&T, Sprint, T-Mobile, and Verizon Wireless as “nationwide providers” for the purpose of implementing our competitive bidding rules in Auction 103, including section 1.2105(c).

38. A party covered by section 1.2105(c) must implement procedures to ensure that a party with a disclosable ownership interest in the covered party and in another applicant (also a covered party) does not have access to the bids and bidding strategies of more than one of the covered parties. Section 1.2105(c)(2) provides that a covered party “must implement internal controls that preclude any individual acting on behalf of the applicant as defined for purposes of this paragraph from possessing information about the bids or bidding strategies of more than one party submitting a short-form or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application.”

B. Initial Commitment Options

39. In the Initial Commitment System, after activating his or her own SecurID[®] token, the Initial Commitment Representative will commit the represented 39 GHz licensees to one of three Initial Commitment options: (1) accept modified licenses based on the Commission’s proposed reconfiguration of the holdings of the 39 GHz incumbent; (2) accept modified licenses based on an acceptable alternative reconfiguration submitted by the incumbent; or (3) relinquish all spectrum usage rights pursuant to the licensees’ existing 39 GHz licenses in exchange for an incentive payment by having the licenses cancelled. To be able to bid for new licenses in Auction 103, a 39 GHz incumbent must submit Initial Commitment Option 3 and commit to having its existing 39 GHz licenses cancelled. An incumbent that submits either Initial Commitment Option 1 or Option 2 cannot bid for new licenses in Auction 103.

40. Additional description of Initial Commitment System details is provided in the Updated 39 GHz Reconfiguration Procedures Public Notice, Appendix D: Updated Initial Commitment Technical Guide. The Bureau/OEA will provide additional information and educational materials regarding the Initial Commitment System in advance of the opening of the Initial Commitment submission window.

41. Reconfiguration by the Commission and Acceptable Alternatives (Options 1 and 2, respectively). An Initial Commitment Representative may commit the incumbent to accepting modified licenses based on the reconfiguration proposed by the Commission (Option 1). Alternatively, a representative may use the Initial Commitment system to submit an acceptable alternative reconfiguration (Option 2). The Initial Commitment System will enable a representative to consider various potential reconfigurations, if feasible, and to determine whether an alternative reconfiguration meets the necessary requirements.

42. It may be possible for there to be more than one reconfiguration consistent with the Commission's requirements if an incumbent has weighted MHz-pops quantities equivalent to a partial PEA in multiple PEAs. In this case, the incumbent will be able to consider the available options using the Initial Commitment System (Option 2). More specifically, in accordance with the Commission's requirements for an acceptable reconfiguration, the Initial Commitment System will allow the representative to round holdings equivalent to a partial PEA either down to the greatest integer less than or equal to the incumbent's updated holdings or up to the least integer greater than or equal to the incumbent's updated holdings, for those PEAs, with at most one exception. The system will notify the representative if choices made are not consistent with having at most one PEA with the equivalent of a partial PEA license.

43. For example, if the representative has indicated that it wishes to round down holdings equivalent to partial PEA licenses in all but one PEA, and the remaining weighted MHz-pops would increase those holdings in the remaining PEA to more than a full PEA license, the system will require the representative to readjust its holdings. Once the representative has

provided input that leads to an acceptable alternative reconfiguration, it may “submit” the reconfiguration and commit the represented 39 GHz licensees to accept modified licenses based on the submitted acceptable alternative reconfiguration.

44. The Commission will issue modified licenses to the FCC Form 175-A applicant. If the FCC Form 175-A applicant does not have a current FCC Form 602 on file, prior to modified licenses being issued, it will file an FCC Form 602 Ownership Form along with basic eligibility, and qualification information required of FCC licensees. Specific filing instructions will be provided, if necessary, in the Auction 103 Closing Public Notice announcing winning bidders. As detailed below in connection with incentive payments, in the event that the incumbent chooses to relinquish its partial PEA holdings, a single incentive payment will be made to the FCC Form 175-A applicant representing the incumbent after the conclusion of Auction 103.

45. In the Spectrum Frontiers Fourth Report and Order, the Commission decided that 39 GHz licensees that accept modified licenses, based on Initial Commitment Option 1 or 2 will not be eligible to bid in Auction 103. Consequently, a party with control over such 39 GHz licensees or that is controlled by a party capable of controlling such 39 GHz licensees will not be eligible to bid in Auction 103.

46. If an incumbent submits Initial Commitment Option 1 or 2 to receive modified licenses, and the modified licenses will include a license for a partial PEA, the incumbent’s Initial Commitment Representative will choose either to keep the modified license for a partial PEA or to relinquish the spectrum usage rights for the partial PEA license in exchange for an incentive payment. If the representative elects to keep the modified partial PEA license, the de minimis rounding rules will apply, potentially rounding the partial PEA block up to a modified license for a full PEA block. In the case of a relinquishment, the incentive payment will be based on the actual MHz-pops of the relinquished holdings.

47. Round Zero Reallocations for an Incumbent Submitting Initial Commitment

Option 3. As part of submitting Initial Commitment Option 3, an incumbent will have an opportunity to reallocate, within constraints, any updated aggregated partial PEA holdings in Round Zero. The Initial Commitment Representative may reallocate the incumbent's updated aggregated partial PEA holdings among the PEAs in which it has such holdings. The reallocation will be done by transferring weighted MHz-pops among eligible PEAs. The Initial Commitment System will notify the representative if a reallocation does not use all of the weighted MHz-pops available. The representative will be permitted to submit a proposed reallocation that does not use all of the weighted MHz-pops available. If a representative does so, the system automatically will apportion any unused weighted MHz-pops to the partial PEAs in the incumbent's updated aggregated holdings by PEA, starting with the lowest numbered PEA.

C. Transition for Existing 39 GHz Licenses

48. Each 39 GHz licensee will hold its existing licenses until after the announcement of winning bidders for new licenses in Auction 103. The incumbent's binding Initial Commitment then will be implemented as part of the post-auction transition.

49. For an incumbent with an Initial Commitment to accept modified licenses (Options 1 or 2), the modified licenses will be issued after winning bidders are announced in Auction 103. The incumbent will know the number of all the modified licenses in each PEA based on its submitted Initial Commitment. The specific frequency blocks for which modified licenses will be issued will be assigned in the assignment phase of the auction and will be announced after the close of bidding along with the geographic boundaries of any modified license for a partial PEA.

50. Incumbents that will be issued modified licenses already have existing licenses in the PEA and may be able to transition any existing operations to new frequencies (or geographic areas in the case of licenses that either covered or now cover only part of a PEA) before any new licenses are granted, as new licenses won pursuant to Auction 103 will not be issued until after

post-auction payments are made and license applications are accepted and reviewed. The Bureau will support this transition by designating the time period after the close of the auction and before new licenses are granted as the transition period for incumbents receiving modified licenses to make the transition. Specifically, the Bureau will issue modified licenses after the close of the auction but not cancel these incumbents' authorizations on their original frequencies to allow for a limited transition period. The Bureau will cancel their original authorizations only after the transition has been made to the new frequencies or when the original frequencies are needed for new licenses, whichever is sooner. If an incumbent choosing to have its licenses modified is moving to frequencies where another incumbent with modified licenses holds its original licenses, the Bureau will need to ensure only one authorization is active. In this case, the Commission would develop a plan to accommodate the transition of both incumbents, which may include granting Special Temporary Authorizations (STAs) to effectuate the transition. The Commission may also consider granting STAs if an incumbent's transition to its new modified frequencies has not been completed before the Commission is ready to grant new licenses in the same frequencies.

51. For an incumbent that commits to relinquish all existing 39 GHz spectrum usage rights in exchange for an incentive payment (Option 3), the Bureau will cancel the existing licenses after the winning bidders are announced in Auction 103. This will make associated spectrum available for authorization for licenses under the new band plan, i.e., modified licenses and new licenses won at auction. The Bureau recognizes that, if these incumbents have existing operations at the time of the close of the auction, they will need a transition period to continue to operate after their existing licenses are canceled and before their new licenses are issued (or until they can transition existing operations to other spectrum bands in which they hold licenses). This transition period will be accommodated through Special Temporary Authorizations (STAs).

52. STA Process. Incumbents that have existing operations and need continuing authority to operate as they transition to new frequencies can apply for an STA, if needed, to

ensure continuity of service. An incumbent will need to explain in its STA request the nature of its existing operations and identify how much time it needs for transition and/or why it was unable to complete the transition in the initial time allotted (if applicable). Any STAs granted will authorize the incumbent to operate only on a secondary, non-interfering basis, and only up to 180 days. Although these STAs will be secondary, incumbents should have sole use of the frequencies authorized for a period of time because the Commission will not be able to grant its first set of new licenses immediately after the auction closes, due to the additional time required for application submission, payments and the period to deny period, among other things. These STAs will not be renewed absent extraordinary circumstances. As these STAs will be issued on a secondary, non-interfering basis, and therefore new licensees in these frequencies have primary operating authority. Incumbents that need additional time to transition also have the option to negotiate leases or other arrangements with the new licensee(s) authorized to operate in those frequencies. The Bureau/OEA will provide the filing deadline for these types of STA requests in the Auction 103 Closing Public Notice announcing winning bidders.

D. Incentive Payments

53. For incumbents that submit Initial Commitment Option 3, the incentive payment will be determined based on the incumbent's MHz-pops holdings in a PEA after Round Zero and the final clock phase price for a spectrum block in the same PEA at the close of the clock phase of the auction and summed across all PEAs in which the incumbent had such holdings. For such an incumbent, the holdings in a PEA after Round Zero will be the incumbent's Updated Aggregated Holdings as modified by the incumbent during Round Zero. For an incumbent that accepts modified licenses for whole blocks based on reconfigured holdings and elects to relinquish reconfigured holdings that are equivalent to a partial PEA, these holdings will be the reconfigured holdings in the PEA with MHz-pops equivalent to less than a full block. As previously noted, holdings equivalent to less than a full block that are relinquished will not include any post-reconfiguration rounding.

54. Based on the authority referred to in the Initial 39 GHz Reconfiguration Procedures Public Notice, and so long as such treatment of the incentive payment is consistent with Federal financial management principles and guidance, the Commission will collect from any winning bidder that also is the applicant on an FCC Form 175-A, amounts net of any incentive payment for the holdings based on the relevant FCC Form 175-A. As already noted, for Auction 103, the Commission bidding system automatically will calculate obligations toward winning bids net of any incentive payment for relinquished holdings when the same party with the same FRN is the applicant for an FCC Form 175-A and for an FCC Form 175.

55. In general, winning bidders must pay their winning bids in full within approximately one month after release of the public notice announcing the close of an auction. However, those winning bid payments are recognized as auction proceeds available to be shared as incentive payments only after the Commission grants licenses associated with winning bid payments. Until then, the Commission holds winning bid payments while it processes the license application(s) of winning bidders and does not disburse them. Accordingly, cash incentive payments will be made only after the Commission grants new licenses that result in the recognition of sufficient auction proceeds needed to make the incentive payments.

56. The auction process will determine a single incentive payment amount with respect to any holdings relinquished by an incumbent. As the Bureau/OEA noted in the Initial 39 GHz Reconfiguration Procedures Public Notice: “Once the combined holdings [of an incumbent] are redistributed by weighted MHz-pops across PEAs, incumbent holdings in a particular PEA may no longer be clearly derived from any particular existing license or, in the case of consolidated licensees, from any particular existing licensee.” In the Initial 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA tentatively concluded that such a single payment may be directed to only one of the commonly controlled existing licensees and we sought comment on whether there is a need to permit the designation of a commonly controlled entity that does not already hold a 39 GHz license.

57. Commission auction rules in 47 CFR 1.2105(a)(3) permit only one entity from a group of commonly controlled entities to be an applicant in a Commission auction of new spectrum licenses. The Commission mandated that a defining characteristic of Auction 103 should be that “incumbents will have the opportunity to replace at no additional cost all existing spectrum usage rights equivalent to a full 100 megahertz blocks with new licenses that are offered in the auction and provide equivalent rights.” This mandate is achieved in part by handling incentive payments for incumbent holdings on a combined basis in order to net them against the winning bids of a single applicant. Accordingly, the Commission’s bidding system automatically will calculate obligations toward winning bids net of any incentive payment for relinquished holdings when the same party with the same FRN is the applicant on an FCC Form 175-A and an FCC Form 175. The alternative proposal in the Initial 39 GHz Reconfiguration Procedures Public Notice recognized that an incumbent might have reasons to use an entity to bid for new licenses that differed from the existing licensee.

58. As reflected in the FCC Form 175-A procedures already described, the Bureau/OEA adopt an alternative proposal to address the interests raised in the record. This decision will enable an incumbent to have its incentive payments reduce the winning bids of its FCC Form 175-A applicant even though that applicant does not hold the 39 GHz licenses being relinquished. T-Mobile supports the alternative proposal and no commenter opposes it. This approach would allow an incumbent to select a new party that controls, is controlled by, or is subject to common control with existing licensees, to be its vehicle for bidding on new licenses. That party’s winning bids, if any, then may be reduced by the incumbent’s incentive payment, even though the party does not itself hold existing 39 GHz licensees. All this may be done consistent with the treatment of holdings on a combined basis.

59. While not objecting to this approach, Verizon would go farther. In response to the Initial 39 GHz Procedures Public Notice, Verizon contends that handling incentive payments, or the issuance of licenses, could have potentially adverse tax consequences. To remedy its

concern, Verizon proposes that participating parties be permitted to designate multiple specific commonly controlled entities to receive licenses and/or incentive payments upon completion of the auction. Verizon acknowledges that the Initial 39 GHz Reconfiguration Procedures Public Notice deemed holdings combined for purposes of reconfiguration and Auction 103 pursuant to an express Commission decision in the Spectrum Frontiers Fourth Report and Order. Nevertheless, Verizon asserts that its proposal to unwind that consolidation is not inconsistent with the Commission's decision.

60. As an initial matter, in the Spectrum Frontiers Fourth Report and Order, the Commission indicated that all existing licenses are subject to change, regardless of the licensee's participation in the incentive auction, in order to implement the Commission's transition to a new band plan and service rules for the 39 GHz band. The Commission also indicated that, although affected by an incumbent's decision whether to bid in the incentive auction for new licenses, the exact form each license will take by the end of the auction will be determined by the overall process we are implementing. The Spectrum Frontiers Fourth Report and Order noted that ultimately the Internal Revenue Service can determine the tax consequences resulting from this process.

61. Further, Verizon's proposal is in tension with the procedures needed to implement the Commission's reconfiguration framework. For the reasons described, Auction 103 will determine a single incentive payment amount for an incumbent's holdings and, moreover, will net that amount against the winning bid obligations of an incumbent that also bids for new licenses. Given this treatment, it is not feasible for the Commission's systems to unwind the process so that each existing licensee may receive new licenses and/or an incentive payment that correlates precisely with the licenses that it held prior to the process, separate and apart from those held by other commonly controlled licensees. Accordingly, the Bureau/OEA cannot afford incumbents all the flexibility suggested by Verizon's proposal.

62. With respect to Verizon's suggestion regarding the distribution of licenses won by the bidder, the Commission's rules require the winning bidder as identified on FCC Form 175 to be the same entity that applies for the licenses on the FCC Form 601 subject to certain exceptions. Section 1.2107(g) provides a limited exception for a winning bidder claiming a bidding credit as a consortium. However, if an entity wishes to assign licenses won in Auction 103 to multiple commonly controlled entities, it may do so through the Commission's standard transfer and assignment process, including making pro forma transfers or assignments, after the licenses have been issued to the winning bidder (47 CFR 1.948). For Auction 103 only, we will permit a winning bidder that represents an incumbent group of commonly controlled entities to notify the Commission in its FCC Form 601 of its intent to make pro forma transfers or assignments of licenses won in Auction 103 immediately upon grant of such licenses, if applicable, which will allow the incumbent to ensure that its modified licenses are assigned to the existing licensees that relinquished the 39 GHz licenses originally. The Bureau emphasizes that a licensee cannot assign or transfer licenses won in Auction 103 until after the FCC Form 601 application associated with those licenses has been granted.

63. In addition, an incumbent's Initial Commitment Representative will be able to direct any incentive payment to more than one account, provided the account owners are either the FCC Form 175-A applicant or one of the existing 39 GHz licensees listed on the FCC Form 175-A.

64. The Bureau/OEA will provide instructions in a later public notice regarding how an Initial Commitment Representative will provide information near the conclusion of Auction 103 regarding the account(s) to which any incentive payment should be made.

VII. PROCEDURAL MATTERS

65. Paperwork Reduction Act Analysis. The Updated 39 GHz Reconfiguration Procedures Public Notice adopts procedures that include information collection requirements that are subject to the Paperwork Reduction Act of 1995 (PRA), Pub. Law 104-13. As described in

the Initial 39 GHz Reconfiguration Public Notice, the Commission previously commenced the PRA approval process for the new information collection requirements associated with the Incumbent 39 GHz Licensee Short Form Application (FCC Form 175-A). As part of that process, the Office of Management and Budget (OMB), the general public, and other Federal agencies have been invited to comment on the new information collection requirements contained in the Updated 39 GHz Reconfiguration Procedures Public Notice. More recently, the Commission has submitted the FCC Form 175-A to OMB for review. Pursuant to the Small Business Paperwork Relief Act of 2002 (44 U.S.C. 3506(c)(4)), the Bureau/OEA also sought specific comment in the Initial 39 GHz Reconfiguration Public Notice on how the Bureau/OEA might further reduce the information collection burden for small business concerns with fewer than 25 employees. No comments were received in response to these issues.

66. Supplemental Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the Initial 39 GHz Reconfiguration Procedures Public Notice, released in March 2019. The Commission sought written public comments on the proposals in the Initial 39 GHz Reconfiguration Procedures Public Notice, including comments on the Supplemental IRFA. No comments were received in response to the Supplemental IRFA. In conjunction with the Initial 39 GHz Reconfiguration Procedures Public Notice, the Updated 39 GHz Reconfiguration Procedures Public Notice develops and details the procedures necessary to implement the pre-auction process for Auction 103. The Initial 39 GHz Reconfiguration Procedures Public Notice, the Updated 39 GHz Reconfiguration Procedures Public Notice and the supplemental Regulatory Flexibility analyses contained therein supplement the Initial and Final Regulatory Flexibility Analyses completed in the Spectrum Frontiers Fourth Report and Order, Spectrum Frontiers Orders, and other Commission orders pursuant to which Auction 103 will be conducted. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA (5 U.S.C. 604).

67. Need for, and Objectives of, the Rules. The Updated 39 GHz Reconfiguration Procedures Public Notice explains the updated procedures the Bureau/OEA will use to implement the steps described in the Spectrum Frontiers Fourth Report and Order to reconfigure incumbents' 39 GHz licenses to better match the new 39 GHz band plan and service rules adopted by the Commission and allow incumbents to make binding Initial Commitments through the Commission's Initial Commitment System. It also describes the process by which an incumbent 39 GHz licensee will have an opportunity to make a binding Initial Commitment through the Commission's Initial Commitment System to (1) have its licenses modified based on the Commission's proposed reconfiguration of its license holdings (and forgo bidding for new licenses in Auction 103); (2) have its licenses modified based on an acceptable alternative reconfiguration that the incumbent proposes, provided that it satisfies certain specified conditions (and forgo bidding for new licenses in Auction 103); or (3) commit to relinquish its licenses in exchange for an incentive payment and have its licenses cancelled, with the ability to bid for new licenses if it so chooses. The procedures in the Updated 39 GHz Reconfiguration Procedures Public Notice constitute the more specific implementation of the decisions contemplated by the underlying rulemaking orders, including the Spectrum Frontiers Orders and relevant competitive bidding orders, and are fully consistent therewith.

68. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA. No comments were filed that specifically addressed the proposed rules and policies presented in the Supplemental IRFA.

69. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposals in this proceeding.

70. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies, adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

71. Regulatory Flexibility Analyses were incorporated into the Spectrum Frontiers Orders and in those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in the Updated 39 GHz Reconfiguration Procedures Public Notice, the Bureau/OEA hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the Spectrum Frontiers Orders.

72. Based on the information available in the Commission’s public Universal Licensing System (ULS), the Commission estimates there are currently 16 incumbent 39 GHz licensees. Of these incumbent 39 GHz licensees, the Commission estimates that up to 8 could be considered a “small entity” under the RFA.

73. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. The Commission designed the reconfiguration and Initial Commitment processes to minimize reporting and compliance requirements for participating incumbent licensees, including those that are small entities. For example, incumbent 39 GHz licensees desiring to make an Initial Commitment will need to file an Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A), which the Commission will use to provide an incumbent 39 GHz licensee (or, if applicable, a group of commonly controlled entities that

hold 39 GHz licenses) with access to the Initial Commitment System in order to make an Initial Commitment regarding existing 39 GHz spectrum holdings. The information that must be provided on FCC Form 175-A is limited to that which is necessary to enable the Commission to provide incumbent 39 GHz licensees with access Initial Commitment System for purposes of making their Initial Commitments.

74. The Bureau/OEA do not expect that the reconfiguration and Initial Commitment processes and procedures will require small entities to hire attorneys, engineers, consultants, or other professionals because the information necessary to comply with these processes and procedures should be available and maintained as part of the customary and usual business or private practice of all incumbent 39 GHz licensees. In addition, to comply with some of the requirements small entities will be able to rely on the Commission's systems rather than having to perform calculations which might have required the use of professionals. For example, for an incumbent submitting Initial Commitment Option 3, if a Round Zero reallocation does not use all of the weighted MHz-pops available, the small entity's Initial Commitment representative will be permitted to submit a proposed reallocation that does not use all of the weighted MHz-pops available. If the representative does so, the system will automatically apportion any unused weighted MHz-pops to the partial PEAs in the incumbent's updated aggregated holdings by PEA, starting with the lowest numbered PEA. Further, with regard to incentive payments, for Auction 103, the Commission's bidding system will automatically calculate obligations toward winning bids net of any incentive payment for relinquished holdings when the same party with the same FRN is the applicant for an FCC Form 175-A and for an FCC Form 175.

75. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available

to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

76. The Commission has taken steps that should minimize any economic impact that the proposed reconfiguration and Initial Commitment processes and procedures may have on small businesses. As an initial matter, the procedures only apply to incumbent 39 GHz licensees. Moreover, the Commission has made an effort to minimize the burden on all participating incumbent 39 GHz licensees, regardless of size, by limiting the information collected on FCC Form 175-A to that which is necessary to enable the Commission to provide an incumbent 39 GHz licensee (or, if applicable a group of commonly controlled entities that hold 39 GHz licenses) with access to the Initial Commitment System in order to make an Initial Commitment regarding existing 39 GHz spectrum holdings. Detailed instructions and guidance to incumbent 39 GHz licensees about filing FCC Form 175-A, including the filing deadline, will be provided in advance of the start of the FCC Form 175-A filing window, and the Bureau/OEA staff will conduct outreach to all incumbents to ensure that they are informed of their options, thereby further minimizing any burdens on incumbent 39 GHz licensees that desire to make an Initial Commitment, including those that are small entities.

77. As described in the Updated 39 GHz Reconfiguration Procedures Public Notice, small entities will be able to rely on Commission systems rather than having to use their own resources to comply with some of the processes and procedures adopted in the Updated 39 GHz Reconfiguration Procedures Public Notice, which will minimize some economic impact. Where a small entity is an existing 39 GHz licensee with existing operations that commits to relinquish all existing 39 GHz spectrum usage rights in exchange for an incentive payment and needs continuing authority to operate as it transitions to new frequencies, that entity will be afforded a transition period where it can continue to operate after its existing licenses are canceled and

before its new licenses are issued. This transition period will be accommodated through Special Temporary Authorizations (STAs) granted by the Commission authorizing it to operate on a secondary, non-interfering basis, for up to 180 days. This process will ensure that an existing 39 GHz licensee can maintain continuity of service and minimize the economic impact for small entities that could occur if there was a gap or lapse in service.

Report to Congress. The Commission will send a copy of the Updated 39 GHz Reconfiguration Procedures Public Notice, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Updated 39 GHz Reconfiguration Procedures Public Notice, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Updated 39 GHz Reconfiguration Procedures Public Notice (or summaries thereof) will also be published in the *Federal Register*.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions Division, Office of Economics and Analytics.